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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

No. 252

ALLEN-BRADLEY LOCAL NO. 1111, UNITED
ELECTRICAL, RADIO AND MACHINE
WORKERS OF AMERICA, ET AL.

Appellants,

WISCONSIN EMPLOYMENT RELATIONS BOARD
AND ALLEN-BRADLEY COMPANY,

Respondents.

**Reply Brief of
Wisconsin Employment Relations Board**

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THE JURISDICTION OF THE COURT

The Solicitor General in the brief amicus subtly suggests:

"The question of supersedure may arise in one of two postures, depending upon the decision of the Court as to the scope of the issues before it. Appellees contend that, for purposes of the present case, the Wisconsin statute must be read as though it contained only provisions authorizing the State Board to enter

orders of the specific type now before the Court; appellants contend, on the other hand, that the Wisconsin Act may not be read in such disjunctive fashion and that the question before the Court is whether the Wisconsin Act is invalid in its entirety (Br. 49-51).

“ * * *

“If, as appellees contend, the Wisconsin statute must be read for purposes of the present case as though it contained only provisions authorizing the State Board to enter orders of the specific type now before this Court—in other words, if the case is to be considered as though those provisions constituted a separate statute and as though the remainder of the Wisconsin Peace Employment Act were not in existence—we believe that no conflict with the National Labor Relations Act does exist.”

This Court does not sit as an appellate Court to review decisions of state courts, under sec. 237 (a) of the Judiciary Act as to whether statutes may be read in the “disjunctive fashion” or as to whether certain provisions of an Act constitute a separate statute as though the remainder of the provisions of the Act do not exist. The Court reviews the decisions of state courts to protect against invasion of federal rights. Constitutional questions can be raised only by litigants who have had a constitutional right of their own invaded. The Court does not first determine the constitutionality of a statute and then determine whether the statute as construed violates some constitutional right of a litigant. It requires the litigant to show that the statute, as applied to him in a particular case under consideration, has invaded a constitutional right of his entitled to protection.

"One who would strike down a statute must show not only that he is affected by it, but that as applied to him it exceeds the power of the State. This rule, acted upon as early as *Austin v. Boston*, 7 Wall. 694, 19 L. ed. 164, and definitely stated in *Albany County v. Stanley*, 105 U. S. 305, 314, 26 L. ed. 1044, 1051, has been consistently followed since that time. Compare *Standard Stock Food Co. v. Wright*, 225 U. S. 540, 550, 56 L. ed. 1197, 1201, 32 S. Ct. 784; *Darnell v. Indiana*, 226 U. S. 390, 398, 57 L. ed. 267, 272, 33 S. Ct. 120; *Roberts & S. Co. v. Emmerson*, 271 U. S. 50, 54, 55, 70 L. ed. 827, 833, 834, 46 S. Ct. 375; 45 A.L.R. 1495; *Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op. Marketing Asso.* 276 U. S. 71, 88, 72 L. ed. 473, 479, 48 S. Ct. 291. For the reasons to be stated, the discrimination complained of, and held arbitrary by the court is, in my opinion, valid as applied to corporations."

(Per Justice Brandeis in *Liggett Co. v. Lee*, 288 U. S. 517, 77 L. ed. 929, 942.)

Thus, in *Austin v. The Aldermen*, 74 U. S. 694, 698, the Court said:

"The only question of Federal jurisdiction, and of which this court can take cognizance is, whether the plaintiff in error has been deprived of any right, contrary to the act of Congress, upon which he relies for protection.

"The facts bring the case within the terms of the act, according to the strictest construction which can be given to them. This is conclusive of the case. Whether, in another case, arising upon a different state of facts, the statute may not produce results in conflict with the act of Congress, and which this court will therefore be bound to revise and correct, is an inquiry upon which we are not called to enter. * * *

Nor does it help the case to urge, as appellants urge, that as their employer in a proper case would be subject to the jurisdiction of the National Act they belong to the class entitled to the protection of the National Act and are therefore entitled to raise the questions sought to be raised. The answer to any such argument is that until such proper case is presented they do not belong to a class entitled to protection of the National Act. Unless the case involves an employer unfair labor practice (which this case does not) the appellants do not belong to a class with respect to which the National Act affords any protection, at least until a law has been applied to them in a particular case so as to deny to them rights which the National Act protects.

See: *Supervisors v. Stanley*, 105 U. S. 305; *Lampasas v. Bell*, 180 U. S. 276; *Tyler v. Judges of Court of Registration*, 179 U. S. 405; *Turpin v. Lemon*, 187 U. S. 51; *The Winnebago*, 205 U. S. 354; *Cronin v. Adams*, 192 U. S. 108; *Darnell v. Indiana*, 226 U. S. 390; *Hatch v. Reardon*, 204 U. S. 152; *Standard Stock Food Co. v. Wright*, 225 U. S. 540.

In *Hampton v. St. L., Iron Mt. & S. Ry.*, 227 U. S. 456, the railroad involved was engaged in interstate commerce and obviously belonged to the class, in a broad sense, entitled to both protection of the Act of Congress involved and to the Constitution itself. But the railroad attempted to raise constitutional issues without showing wherein the Act, as applied to it, had violated any constitutional right that it possessed. It was accordingly denied relief by this Court. A party does not belong to a class entitled to constitutional protection until it has been shown that the law, as applied in a particular case under consideration, has in-

vaded some right of the party entitled to constitutional protection. If the law were otherwise this Court would be continually passing upon hypothetical and academic questions just as it is requested to do in the instant case. This case illustrates in an extreme degree the necessity for the rule. The Board is literally required to retry, by way of argument and investigation, numerous cases that it has handled. Conflicts in administration are attempted to be shown by reference to wholly inadequate factual presentations of the cases; by hearsay piled upon hearsay and at least as to cases cited in the Appendix to the Solicitor General's brief, by a positive misstatement as to the actual facts of the cases referred to.

It speaks well for the administration of this Act by the State Board that neither the National Board nor its Regional Director in the region in which Wisconsin is located, has been able to point to more than four cases in nearly three years' administration of the Act where they can even make any plausible claim that the Act operates as an obstacle to the full effectuation of the federal policy. When the facts in relation to those cases are accurately and more fully stated it will be seen that the Act in its operation and administration does not present any conceivable obstacle to the full effectuation of the federal policy.

The Board had to write its Regional Director to determine whether the Act could conceivably act as an obstacle to the effectuation of the federal policy. Upon the basis of an inaccurate report, submitted by the Regional Director, it is stated in the Appendix:

"* * * It is the considered conclusion of the National Board that the provisions and objectives of the Wisconsin Employment Peace Act (hereafter called

the State Act) in so far as they depart from or conflict with those of the National Labor Relations Act (hereafter called the National Act) have in practice seriously interfered with and frustrated the declared policy of the United States set forth in the National Act—* * *

As the report is inaccurate, the "considered conclusion" amounts to nothing, and yet, an Act which represents the legislative policy of a sovereign state is sought to be set aside by such conclusion and by trying every case except the instant case, which does not involve the invasion of a single constitutional right of any of the appellants.

The Appendix to the Solicitor General's brief states:

"On the other hand, there has been no conflict or difficulty in various other States which have enacted State Labor Relations Acts whose provisions and objectives are in harmony with those of the National Act, and whose state boards have evidenced a cooperative attitude in administering the state Acts. * * *

The Solicitor makes the most of this in his brief. The Board is not accused of lack of cooperation although the language employed is intended to carry that inference. The fact that the National Board points to but four instances in nearly three years' administration of the Act (instances which have been magnified and do not present the true situation) speaks louder than words as to the extent of cooperation that the State Board has given the National Board.

The Board does not point to a single situation where it has requested cooperation and that cooperation has been refused. The National Board will continue to have the cooperation that it has always had as manifested by its

own letter to the Board under date of December 29, 1939, copy of which is attached to this brief as Appendix A.

The appellants' lack of standing to raise the question of unconstitutionality of the Wisconsin law in the case at bar may be easily analyzed by reference to *Cloverleaf Butter Co. v. Haywood Patterson as Commissioner of Agricultural Industries of the State of Alabama* (decided by this Court on Feb. 2, 1942). Would the Cloverleaf Butter Company have had any standing to challenge the Alabama law without showing seizure by the Commissioner of Agriculture of its own "packing stock butter"? Could it succeed upon a record which did not even show that somebody else's butter stock had been seized,—by references in briefs attempting to show that the law, as applied to someone else, may have violated that someone else's constitutional rights? Would the Cloverleaf Butter Company even have standing in this Court to challenge the Alabama statute if it had built a record showing that someone else's butter stock other than its own had been seized? Could the Butter Company have succeeded by championing the constitutional rights of others and without showing any invasion of its own constitutional rights?

We have searched diligently for any authority which would support the appellants' right to challenge in the instant case. We have not found any authority, nor have the appellants cited any which supports that right.

ANALYSIS OF THE SOLICITOR'S ARGUMENT WITH RESPECT TO CONFLICTS BETWEEN THE STATE AND NATIONAL ACTS.

We shall cover only such observations as are made by the Solicitor and which have not been made by the appellants and thus already answered.

The Solicitor does not claim that the field of labor relations is preempted by the National Labor Relations Act. Indeed, any such claim would be entirely inconsistent with the National Board's administrative interpretation of the Act. Thus in the Board's Second Annual Report, p. 2, for the year ending June 30, 1937, the Board states:

"A completely new and important development during the past year was the passage by a number of State legislatures of State labor relations acts, modeled in large measure after the National Labor Relations Act. Such legislation was passed in Massachusetts, New York, Pennsylvania, Utah, and Wisconsin, and by June 30, 1937, labor relations boards were in the process of formation in several of these States. This trend of applying the principles embodied in the National Labor Relations Act to all industry, whether interstate or intrastate, is a healthful one, and will undoubtedly become more widespread. It is important that uniformity of legal principles and administrative policies be achieved, and the Board hopes to aid in achieving this result by means of conferences with the various State boards and by an interchange of information."

Again in the Third Annual Report of the Board for the year ending June 30, 1938, p. 3, the Board states:

"C. STATE LABOR RELATIONS BOARDS

"In its last report the Board stated that it looked with favor on the adoption of State labor relations acts patterned after the National Labor Relations Act. Consequently, the Board regrets that during the fiscal year covered by this report no other States saw fit to follow the example previously set by Massachusetts, New York, Pennsylvania, Utah, and Wisconsin by passing labor relations acts. Labor relations bills were, however, introduced in several legislatures.

"Last year the Board also reported that it hoped to make cooperative arrangements with the State boards to the end that administrative friction and lack of uniformity in the application of principles would not ensue. This hope has been completely fulfilled and the Board or its agents has been able to achieve satisfactory working arrangements with all of the State boards or their agents. As a result, cases filed with this Board in which State boards had jurisdiction were immediately and informally transferred to the State boards, or vice versa, with a minimum of misunderstanding and with no delay. Since many cases which would have previously been filed with this Board but over which this Board would nevertheless not have had jurisdiction were filed with State boards after they were organized, the unnecessary burden of investigation of such cases theretofore carried by the Board was lifted.

"Naturally, the Board hopes that when the State legislatures meet again they will give serious consideration to the question of bringing to workers engaged in intrastate business the benefits now enjoyed by workers in interstate commerce. The Board has not been jealous of its jurisdiction and is prepared to cooperate with any new State boards to the same extent as it has with the boards already created."

Thus, in analyzing the question of conflict between the two Acts, cases involving a preempted field are obviously inapposite.

The Solicitor states that it is "a departure from the Congressional policy to suggest, as the State Act does, in its references to 'interference' and 'coercion' by either party (See 111.01 (2), 111.06 (2)), that employers and employees stand upon an equal footing in this respect, that workers and unions have no more legitimate concern in the organization of employees than have the employers themselves.

***"

The State Act does not suggest that workers have no more interest in organization than do employers. Having in mind the legal concept of "interference" and "coercion", *Texas & New Orleans Railroad Co. et al., v. Brotherhood of Railway & Steamship Clerks et al.*, 281 U. S. 548, 568, 50 S. Ct. 427, 74 L. ed. 1034, does the Solicitor mean to suggest that it is the established policy of the National Act that workers shall have their will overcome by other workers and be *compelled* and *forced* to join unions? And if such is the policy of the National Act would the Solicitor contend that it is constitutional? Does the Solicitor mean to infer that by the passage of the National Act the states lack the power to prevent workers *compelling* and *forcing* other workers to join unions and to engage in collective bargaining activities?

We have already shown that the definition of a "labor dispute" (sec. 111.02 (8)) is of no significance in the administration of the Act. The Solicitor, in pointing out differences in definitions between the two Acts, states that the "State law excludes from the definition all controversies regarding wages, hours and working conditions,—the major

cause of labor strife." Is the Solicitor merely pointing out difference in language or is he contending that the definition in the state law is not sufficiently comprehensive in terminology to embrace "wages, hours and working conditions"? The language of the definition obviously is sufficiently comprehensive to embrace "wages, hours and working conditions". No one has ever had the temerity to argue otherwise.

The same observation applies with respect to the Solicitor's comment regarding collective bargaining, sec. 111.02 (5). The Solicitor emphasizes the use of the term "negotiating" in the definition and then comments that collective bargaining in sec. 8 (5) (not defined in the National Act) has been construed to extend beyond the act of negotiation and to include a written agreement when terms and conditions are actually agreed upon. Why the emphasis upon the term "the negotiating" and a complete ignoring of the rest of the definition of the term "in a mutually genuine effort to reach an agreement"? Does the Solicitor intend to imply that the State Act is not susceptible of the meaning that agreements, when arrived at, must be reduced to writing? Every argument that can be made in favor of the National Act requiring agreements, when arrived at, to be reduced to writing is equally applicable to the State Act requiring the same thing. Just what legitimate argument can be made that the State Act does not require agreements when arrived at to be reduced to writing?

The Solicitor feels that sec. 111.06 (1) (d), which provides that an employer is not guilty of refusing to bargain collectively in the event he demands an election, is subject to endless abuse by an employer anxious to avoid

meeting his employee representatives at the council table. The answer to that question is that this section does not permit any abuse by an employer. An employer is not obliged, under the National Act, to bargain collectively unless the union submits some form of proof to him that they represent a majority in an appropriate collective bargaining unit and are entitled to demand collective bargaining. If an employer refuses to bargain collectively where he has been furnished such proof and where there can be no reasonable doubt as to the union status, he could not successfully defend an employer unfair labor practice case by a mere plea that he is entitled to have an election held under sec. 111.06 (1) (d) before he bargains. To avail himself of the terms of this provision, an employer undoubtedly must show "good faith" and inability to determine the question as to whether the union occupies the status whereby it can insist upon the employer bargaining collectively with it. So construed (and that is the only proper construction of the section) there obviously is no conflict with the National Act.

The point is made that sec. 111.06 (1) (b) "permits the employer to 'cooperate' with representatives of a majority of his employees, at their request, by allowing 'employee organizational activities on company premises or the use of company facilities where such activities or use create no additional expense to the company.' Under the National Act, in a proper cases, this is a form of forbidden employer support of a labor organization." The Solicitor cites *Nat'l. L. R. Bd. v. Bradford Dyeing Ass'n.*, 310 U. S. 318, in support of his argument. The answer to the argument is that this would be a form of forbidden support of a labor organization under the State Act in a proper case

and that those proper cases do not differ at all under the State Act and under the National Act. The question is one of fact under both Acts as to whether the organization is in fact company dominated. The organization found to be company dominated in the *Bradford Dyeing Ass'n.* case, above cited, would unquestionably be found to be company dominated under the State Act. Will cooperation with representatives of a majority of his employees, at their request, "by allowing employee organizational activities on company premises or the use of company facilities where such activities or use create no additional expense to the company" alone and without more, establish a company dominated union under the National Act? The Solicitor does not claim that it will. We know of no case where the National Board has ever so held or where, if it has ever so held, it has been sustained by the courts in so holding.

It is urged that under sec. 111.05 (3) the State Board must list on the ballot the names of all organizations submitted by an employee or group of employees; that under the National Act the Board is most circumspect in placing on the ballot so-called "independent unions" which may, upon investigation, be company dominated. If the Solicitor means to infer from the above statement that the State Board is required to place upon a ballot for a collective bargaining representative, an independent union or for that matter a national union, which stands charged before the Board as being company dominated, the Solicitor is in obvious error. It is stated that "unsympathetic administration in this regard would make a mockery of the employees' rights." The only answer that need be made to that observation is that there has been no unsympathetic

administration. As is shown by the State Board's own statement, attached hereto as Appendix B, the Board knows of no case where it has ever certified an independent and where it has ever subsequently been set aside by the National Board as a company dominated union. This is a remarkable record as a few such instances *might* easily occur in the administration of any Act, including the National Board's administration of its own Act. When they do occur, they do not prove anything other than that one Board acted upon certain evidence and that another Board acted upon perhaps more complete evidence or that the same Board, after certification, subsequently acted upon more complete evidence.

The Solicitor comments upon sec. 111.06 (2) (e) of the State Act with respect to unauthorized strikes. The Solicitor refers to that provision in the National Act which states that nothing therein shall be construed to impede or interfere with or diminish in any way the right to strike. (sec. 13). Does the Solicitor mean to infer from this that the National Act confers the right to strike and that the states are without power to regulate strike activities engaged in by minorities? What function does sec. 13 serve in the National Act? The constitutional basis for the legislation is that of preventing burdens or obstructions to interstate commerce. Such being the constitutional basis for the National Act and the avowed purpose of the Act, without sec. 13 it might well have been argued that the Act restricted the right to strike. Sec. 16 is placed in the Act for the sole purpose of indicating Congressional intent that so far as the Act itself is concerned it shall not be construed as imposing limitations upon the right to strike. But that is a far cry from saying that the Act con-

ferred the right to strike and took away from the states all power to regulate strike activities. Does the Solicitor mean to infer that a minority union in a collective bargaining unit can demand a closed shop of an employer or recognition as the exclusive bargaining agent where the National Board has certified a majority union as the exclusive bargaining agent, etc., and carry on all activities directed against an employer to attain these ends, that they could carry on, if they were a majority union making lawful demands which the employer could meet; that the National Act conferred upon minority unions such rights and that the State can do nothing to protect an employer so circumstanced? The Solicitor talks about legitimate grievances. Legitimate grievances can be analyzed only with respect to specific situations.

The Solicitor concludes his analysis by the statement:

"On the foregoing analysis of the two statutes, the same employer and the same employees will have different status, rights and privileges arising from the same set of facts."

This statement is not justified either with respect to analysis of the substantive provisions of the Act or the operation or administration of it.

ANALYSIS OF THE STATE BOARD CASES CITED IN THE APPENDIX TO SOLICITOR'S BRIEF.

Appendix B attached hereto is the State Board's statement of cases cited in the Appendix to the Solicitor's brief; with respect to other matters referred to in said brief and in the reply brief of the appellants. It is a correct statement of the four cases which the Solicitor relies upon and which the National Board relies upon to establish the conclusion that the State statute in its practical operation stands as an obstacle to effectuation of the federal policy as set forth in the National Act.

In relation to Case 1, cited in the Appendix, the General Counsel for the National Board refers to "minor violence". The Solicitor assumes that this case involved only such activities. There is obviously too much loose talk of such nature both in the Solicitor's brief and in the Appendix, —talk about something about which none of the parties submitting the matter appear to be well informed. The instant case was by no means confined to "minor violence". The record before the Board consists of something over 650 pages without exhibits. A woman employee who wanted to work during the strike was so injured in attempting to go to work that she subsequently sued the City of Milwaukee for failure to perform its statutory duty to furnish her protection against acts of violence and recovered a judgment against the city for \$1500.00.

The conduct engaged in by the union and its members in this case would not be tolerated in any civilized society. It was a record which would have justified injunctive relief in any court in the land and by provisions similar to those in the Board's Cease and Desist Order.

It is further stated in relation to this case that "as a result in part of the proceedings before the State Board, the strike was abandoned on August 4, 1939." Just what does the Regional Director know about what actually motivated the abandonment of the strike? And if the State Board's order which required the ceasing of activities recognized as unlawful in any civilized society did result in abandonment of the strike, is the Board to be inferentially criticized for same? Just wherein did the Board's action impede the effectuation of the policies of the National Act? The glaring inaccuracies in the National Board's report upon this case are sufficiently covered in the State Board's statement with respect thereto. The facts in relation to other cases cited in the Appendix to the Solicitor's brief are sufficiently stated by the State Board (Appendix B).

ANALYSIS OF STATE BOARD'S CASE CITED BY THE APPELLANTS IN THEIR REPLY BRIEF.

We have no intention of making a full factual presentation of every State Board case cited by the appellant in its reply brief. It appears from the Board's statement with reference to these cases that they all come within the working agreement which the State Board had with the National Board. If the National Board wished the State Board to refrain from acting in any of such cases, all that it had to do was say so. It did not say so and all that the State Board did was to go ahead and act in accordance with its understanding and agreement with the National Board. The National Board states in its report (see Page 9 this brief) that it "has never been jealous of its jurisdiction." Counsel for the appellants are apparently jealous

of the National Board's jurisdiction. They apparently know more about when the National Board should take jurisdiction and when the State Board should not than the National Board itself.

Attached as Appendix C is a decision of the Board in the matter of Allis Chalmers Mfg. Company and Independent Union of Allis Chalmers Employees which exhibits very clearly the Board's policy with respect to collective bargaining units where the National Board has acted with respect to the establishment of same even though the situation has considerably changed since the National Board acted. The State Board simply refuses to interfere and leaves it to the National Board to establish new bargaining units if it deems the changed situation requires such action.

Further, it is very essential to have a full factual presentation of any case before any conclusion can be reached with respect to same. Further, the language of the Board in any particular case has to be read in the light of the full factual situation of that particular case.

The appellants attempt to show (pages 11-13 inclusive) that we were in error in our statement that the Board has never considered Section 111.06 (1)-(e) when read in connection with Section 111.02 (5) to prohibit a minority union from bargaining with respect to wages, hours and working conditions with respect to its members only. The appellants cite two cases where they contend the Board adopted the contrary view. You do not prove a point by a mere play upon words. We show in our prior brief where collective bargaining has a definite significance under the Wisconsin Act and that collective bargaining under the Act constitutes bargaining by a majority of employees in a

collective bargaining unit for all employees in that unit. When the Board prohibits collective bargaining in the language of the statute, it is not prohibiting bargaining, as distinct from collective bargaining in the language of the statute, by a minority with respect to its members only.

Anyone wishing to be at all fair about the matter, and particularly local counsel for the appellants, knows full well that the Board has never interpreted the Act to prohibit an employer from bargaining with a minority union with respect to its members only. The cases cited by the appellant upon this point show very clearly that the unions were not attempting to bargain for its members only but were asserting the right to bargain for all in the unit and in one case demanding a closed shop contract when it was apparent that it was not a majority union and had no right to demand either the one or the other. Those are things which the Wisconsin Act seeks to protect against,—union demands which the union has no right to make either under the National Act or the State Act.

Thus in the *Lakeside Bridge* case cited by the appellants (page 15) the union demanded that it be recognized as the exclusive bargaining agency of all the employees. The union membership was shown to be 5 or 6 out of a total of some 169 constituting the bargaining unit. Other unlawful demands were made and insisted upon and were the determining factors in preventing any adjustment of the controversy.

The appellants refer to the *Rock River Woolen Mills* case (Page 17). It would take several pages to tell the full history of that case. Many of the details appear in the decision of the *National Board Case No. R-1615*. Suffice it to say that in 1937 the union involved had an all

union contract with the employer which contract recognized the union as the sole bargaining agency for the company's employees. Before expiration of the extended contract the company received information by cards signed by its employees and by more than a majority to the effect that they no longer wanted the union to bargain for them. The contract expired July 15, 1939. It was extended by stipulation until October 15, 1939, the union agreeing in said stipulation that a consent election should be held by the National Board prior to October 15. The union refused to go through with the stipulation. It obviously knew that it did not represent a majority,—it was having internal trouble. The union devised its strategy so as to prevent any determination of the question of right of representation. On October 9, 1939 it requested the National Board for permission to withdraw its petition for investigation and certification of representatives. From here on it started to play horse with both Boards. The facts are sufficiently detailed in the decision of the National Board above referred to. It attempted to have the National Board certify it as an exclusive bargaining agent without holding an election. It failed and it failed upon every single point that it raised before the National Board. The union insisted upon recognition as exclusive bargaining agent when it knew full well that it was not entitled to any such recognition under either the National or the State law. Its strategy was to try to prevent any determination of that fact by either the National or the State Board, and all to the end that it might continue its unlawful demands against the employer as well as deny to the majority in the collective bargaining unit rights which both Acts seek to foster and protect.

It is not perceived wherein *Allis Chalmers Mfg. Company v. Allis Chalmers Workers Union No. 248* cited by the appellants (page 22) is of any import. We would think that the least said about that case the better so far as the appellants are concerned. The decision of the Circuit Court for Milwaukee County in relation to the case will be found in C. C. H. and reported as *Allis Chalmers Workers Union v. W. E. R. B.*, 4 L.C. 40, 429 decided April 3, 1941. In that case the strike was called against this company employing some 8,000 men and having something in excess of \$45,000,000 war contracts. The plant was entirely closed down so far as production was concerned, for a period of nearly three months. The employees suffered a wage loss in excess of \$2,500,000. The union and the election committee in conduct of the strike vote caused at least 2,200 ballots to be marked as favoring the strike and caused such ballots to be counted and reported as votes of individual employees of the company in favor of a strike which were in fact forgeries and conceded to be such. The Secretary of the Navy demanded that the company resume operations. The company endeavored to comply and this resulted in rioting to the extent that the Governor of the State appealed to the National Government for armed forces. It would take a bold person to assert that the union's loss of its case in the Circuit Court with respect to the State Board's Order was not at least of some help to the War Labor Board in finally bringing about a resumption of work.

CONCLUSION

The only cases cited by the General Counsel for the National Board in the Appendix to the Solicitor's brief as calculated to show that the State Act in its operation impedes the federal policy, are cases which, when analyzed in the light of their facts, are lacking in substance with respect to impediment. Further, they are all cases involving the State Board's use of its election machinery. They are instances which could occur if the State Board were administering the State Act up for consideration in the case of *Wis. L. R. Bd. v. Fred Rueping L. Co.*, 228 Wis. 473; 279 N. W. 673 (1938),—that is the 1937 Act. They do not demonstrate any conflict in the Act itself. It is most difficult to understand why the National Board has made no effort to iron out any dissatisfactions that it has with respect to election matters. It is most difficult to understand why the National Board, if dissatisfied, has not at least arranged for a discussion as it said it would do in its letter of December 29, 1939, to wit:

"In the event any occasion for a further discussion arises in the future we will be glad to arrange for such a discussion."

The cases cited are all cases that would evaporate out of the picture by the mere arranging for and holding of such a discussion or conference. The cases cited are not cases which arise out of inconsistencies in the two laws. They are cases involving administrative problems which will arise in the administration of any law. If, when administrative problems arise, the dissatisfied agency keeps its dissatisfaction to itself and makes no effort to eliminate

administrative problems giving rise to dissatisfaction, it can hardly be concluded that the law stands as an obstacle to effectuation of the federal policy. Reasonable men can always overcome without difficulty problems in administration. It appears clearly from the State Board's statement that the State Board was under the impression that it was administering the state law with respect to election matters with the entire approval and in harmony with the wishes and desires of the National Board.

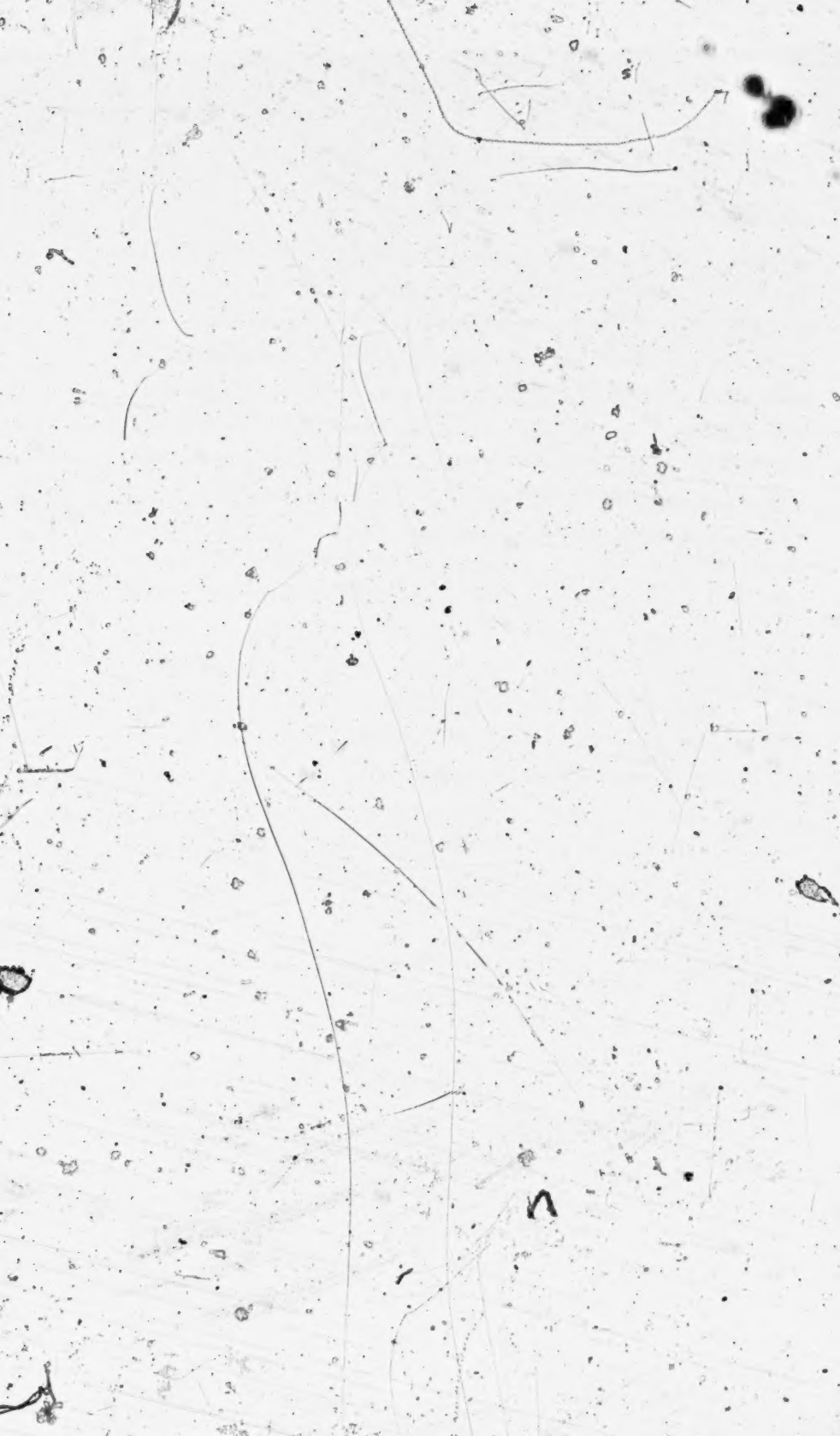
Respectfully submitted,

JOHN E. MARTIN,
Attorney General;

JAMES WARD RECTOR,
Deputy Attorney General,

N. S. BOARDMAN,
Assistant Attorney General,

Counsel for Respondent,
Wisconsin Employment Relations Board.



APPENDIX

EXHIBIT A

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

December 29, 1939

Henry C. Fuldner, Chairman
Wisconsin State Labor Relations Board
Madison, Wisconsin

Dear Mr. Fuldner:

This has further reference to the conference held between members of your Board and this Board in the office of Chairman Madden in Washington on Tuesday, December 5.

This Board is gratified that to date there has been no evidence of friction between your Board and ours. The Board is confident that there need be no friction in the future.

Since it may be helpful to relations between the two Boards, this Board is prepared to state that ordinarily it will not assume jurisdiction in cases in Wisconsin involving hotels, restaurants, laundries, dry cleaning establishments, beauty parlors, garages and other service industries, hospitals, cemeteries, retail stores, local transportation, local utilities, building and construction contractors. You will appreciate of course that cases may arise in any one of these industries or services which would warrant this Board in taking jurisdiction. This Board also knows that you appreciate that in the event of a conflict of jurisdiction, the jurisdiction of the Federal Government is supreme.

In the event any occasion for a further discussion arises in the future, we will be glad to arrange for such a discussion.

Very truly yours,

(Nathan Witt)

Nathan Witt,
Secretary

EXHIBIT B

BOARD'S STATEMENT OF CASES CITED IN APPENDIX TO THE SOLICITOR'S BRIEF; WITH RESPECT TO OTHER MATTERS REFERRED TO IN SAID BRIEF AND IN THE REPLY BRIEF OF THE APPELLANTS.

1. ALLEN-BRADLEY CO., N.L.R.B. Case No. XII-C-473; W.E.R.B. Case No. 6 CW-1.

It is stated that it is understood that the above case is the same case as that which is now pending in this Court. It is not the same case. It does involve the same company. The Board completed its hearing in the case at bar on June 30, 1939. The record shows no complaint of any kind filed with the National Board. The Appendix states that complaint was filed with the National Board on July 1, 1939. The Appendix states that on July 13, 1939 the State Board issued a decision finding that the union and 14 of its members had committed unfair labor practices under the State Act through mass picketing and minor violence and ordered that they cease and desist therefrom. The decision of the Board on July 13 was an interlocutory order. This order made no reference, either in the findings

of fact or conclusions of law, with respect to the fourteen members having committed unfair labor practices. The final order in the case at bar, dated February 1, 1940, in conclusion of law No. 2, concluded that the fourteen named employees were guilty of unfair labor practices (R. 16). The Appendix states:

"On September 29, 1939, the Union amended its charges of unfair labor practices pending before the National Board. Thereafter pursuant to action taken by the regional office of the National Board, these charges were settled prior to issuance of a complaint by the National Board; the settlement included the reinstatement with full seniority and other rights and privileges of six employees who, the Union had charged, were discriminated against in violation of Section 8 (3) of the National Act. * * * Thereafter, in 1940, the State Board upon petition of the employer conducted an election among the employees to determine collective bargaining representatives, but excluded from the voting the said 14 employees, including the six employees who had been reinstated with full seniority and other rights and privileges pursuant to action taken by the regional office of the National Board. The State Board thus disenfranchised six persons who under the National Act were apparently employees like all other employees and entitled to all the rights and privileges pertaining to employee status."

At the time of the holding of the election in question the Board had no information with respect to any claim that there were persons entitled to vote who did not vote. No claim was made at the hearing that there were persons entitled to vote whose names did not appear upon the company's payroll. As shown by the affidavit of Leo Mann,

attached hereto and marked Appendix B-1, the company had discharged some twenty employees in August, 1939. This did not appear at the hearing before the Board on the company's petition for election. The company filed a petition for this election on September 9, 1940; hearing was held upon the petition on September 24, 1940; order for election was entered October 7, 1940; the election was conducted October 30, 1940 and the Board certified the results November 12, 1940.

The statement in the Appendix makes it appear that the Board deliberately disenfranchised and kept from voting six employees whom the National Board had succeeded in having the company reinstate and that they were reinstated prior to the holding of the election conducted by this Board. The affidavit of Leo Mann, attached hereto, shows that these employees were not reinstated by the company until after December 16th, 1941,—over a year after this Board held the election in question.

There was not at that time and never has been any proceeding before the National Board relating to the investigation and certification of representatives of employees of the Allen-Bradley Company that has been brought to the attention of this Board. The National Board did not request this Board not to hold this election. When the National Board is interested in having this Board hold up election proceedings pending some action by that Board, it has never hesitated to make such request and this Board has never refused to comply with such a request. At the conference held in Washington, referred to in Exhibit 1, the arrangement made with the National Board at that time was that when that Board wished this Board to withhold action in any election cases where charges were pend-

ing before the National Board involving either the question of company domination of a union or discriminatory discharges for the purpose of discouraging membership in the union, the National Board would request the State Board to withhold its action and this Board agreed that it would do so. This Board agreed that it would withhold action on petition for an election until such time as the National Board would have an opportunity to complete its investigation of the charges and determine whether or not to issue a complaint. The National Board agreed that in all cases it would be able to complete such investigation in not more than sixty days. If the National Board did not desire this election held at this time it had only to make such request pursuant to the working understanding between the two Boards.

2. *NORTHERN STATES POWER CO., N.L.R.B., Case No. (XII-RE-3) RE-31; W.E.R.B., Case No. 1, No. 397 E-138, Decision No. 283.*

This case is one with respect to which there is no need for any similar occurrence in the future. At the time this Board determined to hold an election the National Board had made no determination with respect to the appropriateness of the existing collective bargaining unit. The Board had simply dismissed the petition without hearing. If the Board in its dismissal had stated, as it now states in its Appendix, that it deemed the existing bargaining unit the appropriate unit and the Eau Claire unit inappropriate, that would have concluded the matter. The National Board had not done so and this Board was unable to determine with any degree of certainty that the National

Board had made any determination at all with respect to the appropriateness or inappropriateness of the Eau Claire unit.

The International Brotherhood of Electrical Workers brought suit against this Board to enjoin the Board from conducting the election and as an *ex parte* matter procured an order to show cause as to why a temporary injunction should not issue pending final hearing upon the petition, and in the interim, likewise as an *ex parte* matter, procured a temporary stay order restraining the Board from conducting the election pending the hearing on the application for temporary injunction.

The attorneys who procured the temporary stay order took the matter up with this Board and its counsel in the Attorney General's office and the Board and its counsel agreed to let the temporary stay order stand until such time as a petition to the National Board for determination of the appropriate unit could be acted upon and disposed of by the National Board. The *modus operandi* for effectuating the above result was by counsel for the union and counsel for the Board agreeing upon various postponements with respect to hearing upon the application for temporary injunction and thus in the interim permitting the temporary stay order to govern. This necessitated various agreements with respect to adjournment,—adjournment having in each case been to a specific date,—and the National Board not having disposed of the matter by the time the adjourned date was reached.

When the National Board did act and determined the appropriate unit, dismissal of the court case was agreed upon by stipulation of the parties, order of dismissal was

entered by the court and this Board in turn dismissed the proceeding before it.

It is unfortunate that the National Board in dismissing the first petition did not state its reasons for dismissal so that this Board could determine that the National Board considered the existing bargaining unit the appropriate unit. So far as this Board was concerned all matters were worked out amicably with all parties involved in all of the proceedings and to the end that the National Board might determine the appropriate unit if it desired to do so. It is stated in the Appendix:

"The I.B.E.W. threatened to strike if the Company recognized the U.M.W. even if the latter won the State Board election; indeed the I.B.E.W. threatened to strike if the State Board even proceeded to hold the election."

The Board is not advised with respect to the threats. Whatever threats were made it is apparent that in the light of the factual situation and the handling of the case by the Board and its attorneys there never was any serious strike situation at the plant due to any action of this Board.

3. *FOX RIVER VALLEY KNITTING CO., N.L.R.B. Case No. XII-C-742; W.E.R.B. Case No. 1, No. 432-E-149.*

In this matter petition for election was filed by the so-called Independent Union with this Board on August 25, 1941. At the hearing the International Ladies Garment Workers Union appeared and objected to the holding of an election by this Board on the ground that charges were

pending before the National Board filed on July 18, 1941, and that a petition for investigation and certification had been filed with the National Board on July 26, 1941. The State Board hearing was held on August 29, 1941. On September 13, 1941 the Regional Director of the National Labor Relations Board was contacted by the Executive Secretary of this Board to check the status of the proceeding before the National Board and was informed that nothing was being done on the investigation at that time because no Field Examiner was available for the assignment. On September 23, 1941 at a meeting of this Board, the Board voted to suspend further action until October 30 in order to allow the National Board time to complete its investigation of the charges and to dispose of the petition for election. On October 27, 1941, the Regional Attorney and the Field Examiner of the 12th Regional Office conferred with this Board and advised the Board that the investigation had been completed; that the Field Examiner had recommended the issuance of a complaint and that a complaint would be issued within a week and a hearing probably be held thereon between ten and twelve days after its issuance and requested the Board to hold the case in abeyance for such period of time. The matter was held in abeyance until November 27, at which time the Board made an order directing an election. Up to that time no complaint had been issued by the National Board against the company. On November 28, 1941 the Regional Director of the National Board telephoned to inquire whether an order of election had been issued and was informed that the order was signed and issued the day before. He then requested that the Board delay scheduling the election for a period of a week or ten days stating that the National

Board had prepared a stipulation which had been transmitted to the parties in interest several days before. The stipulation provided for the disestablishment of the Independent Union as a collective bargaining agency of its employees. The Director at that time stated that he felt the parties might agree to the stipulation. He further stated that if the parties refused to execute the stipulation the National Board would feel compelled to issue a complaint against the company on the ground of company domination of the Independent Union but that he knew the employees did not want the International Ladies Garment Workers as bargaining agent and in all probability would organize another independent union anyway. This information was conveyed to this Board and the scheduling of the election was accordingly delayed pursuant to the Regional Director's request.

Thereafter, on December 27, this Board having heard nothing further from the Regional Director, wrote advising him that pursuant to his telephone request of November 28 it had postponed arranging for the election which had been ordered on the preceding day and asked what disposition had been made by the National Board in the negotiations regarding the stipulation. On December 29 the Regional Director notified this Board that the stipulation was signed on December 12 and that the National Board was conducting an election at the employer's plant on December 31. A copy of the stipulation was received from the National Board on January 10, 1942 and upon receipt of such stipulation an order was made by this Board dismissing the proceedings.

At no time did the Regional Director ever inform this Board that its action of November 27 in ordering an elec-

tion had at all interfered with any "tentative agreement" previously reached or at all interfered with or made more difficult the final agreement by stipulation. Since receipt of the Solicitor's brief the Board has called the attorneys for both the Independent Union and the International Ladies Garment Workers. Both attorneys advise that neither union had any intention of striking or ever threatened strike, either before this Board's action of November 27 or thereafter. The Board was further advised by the attorney for the Independent Union by telephone on December 5 that there was a strong possibility that the Independent would sign the National Board's stipulation which provided for dissolution of the union and requested that the Board not schedule the election. This attorney advised on December 10 that the Independent had approved the stipulation and suggested that the Board withhold scheduling the election. The attorney for the Independent further advises us that the Independent's attitude did not change at all as a result of this Board's action of November 27 ordering an election. He states that the union was no more difficult to deal with thereafter than it was before.

4. CREAMERY PACKAGE MFG. CO., N.L.R.B. Case No. (XII-R-341) R-2705; W.E.R.B. Case III, No. 348 E-117.

The facts with reference to the dates and the proceedings conducted before the State Board and the National Board are approximately correct. The only issue involved before either Board was as to whether certain employees were confidential employees and thus should be excluded from the collective bargaining unit. The unit involved was a unit of office employees. There were some twenty-three

such employees. There were seven with respect to whom there was no dispute. The company claimed that sixteen were supervisory or confidential employees and should not be included in the unit. The union claimed that of such sixteen all should be included except five which they conceded to be supervisory or confidential. This Board held with the union and concluded that eighteen were entitled to vote.

The National Board, after holding its hearing, concluded that one employee listed as stenographer, who makes reports of a confidential nature to the general office and who has taken dictation concerning labor problems in the plant, receives information which appears to be confidential and directly related to the problem of labor relations, should be excluded on that ground and was excluded.

The difference in the unit thus established was one employee which this Board thought was entitled to organizational benefits and which the National Board concluded was not.

This Board was advised by the attorney for the company involved that they were considering a refusal to bargain with the S.W.O.C. pending court proceedings. Their refusal to bargain, however, was based not on any conflict in the findings but was based on the fact that both the National Board and the State Board had included within the unit several employees whom they contended were not entitled under either law to the benefits of collective bargaining because of the confidential relationship they had with the company. Any threat of strike that there may have been (if there was any) was undoubtedly because of the company's refusal to recognize the right of so-called confidential employees to bargain collectively.

This Board has been most anxious to avoid any conflicts in administration of the two acts. We have always looked upon secs. 111.17 and 111.18 of the Statutes as an express mandate to us to so administer the state law as not to thwart any policy of the National Act and as an express mandate to us not to apply the Act or any provision of it to circumstances which would involve intrusion upon the federal domain. We accordingly requested the conference with the National Board which was held in December, 1939. At the conference various features of the state law were discussed, including the matter of holding elections for purposes of determining bargaining units,—units which might be established by the vote of the affected employees under the state law. The matter of this Board conducting elections generally was discussed. We pointed out that whenever we conducted elections for any of the purposes for which elections may be conducted under the State Act, the result of the election would prevail only until such time as the National Board concluded that it ought to step into the picture either for purposes of determining a different collective bargaining unit from that established under the state law or for purposes of verifying or holding an election with respect to other matters determined by state elections. The National Board at the time manifested no concern about the matter of this Board proceeding with elections in any situation except situations where the National Board had pending before it charges of employer unfair labor practices and particularly charges involving company dominated unions. In such situations the National Board requested us not to proceed with elections until it had an opportunity to investigate the charges filed. We have already set forth the substance of the Na-

tional Board's request and the State Board's agreement in this regard.

We suggested weekly clearance between the National Board and this Board with respect to cases, so that there might be no friction or question of this Board interfering where the National Board deemed it important that it handle a particular situation. The National Board apparently did not feel that such was necessary or desirable. No friction or clash had developed and apparently the National Board thought that the two acts could be administered in promotion of the federal policy by existing procedures.

The Board Secretary stated in his letter to us dated December 29, 1939 (Ex. A):

"This Board is gratified that to date there has been no evidence of friction between your Board and ours. The Board is confident that there need be no friction in the future.

"* * *

"In the event any occasion for a further discussion arises in the future, we will be glad to arrange for such a discussion."

This Board has felt no small degree of pride in the cooperation and assistance which it has given the National Board in the administration of its Act. We have endeavored to administer the state Act in complete harmony with all understandings arrived at in the conference at Washington in December, 1939. We have administered the Act since that date as we were administering it before that date.

So far as this Board knows, it has never certified an independent union as a collective bargaining agent in any

instance where the National Board has subsequently had occasion to disestablish the union.

If the National Board now feels that this Board has conducted elections in situations where the Board should have refrained from conducting such elections and that our conducting of same has actually impeded the administration of the National Act, it would seem that pursuant to the Board's letter of December 29, 1939—"In the event any occasion for a further discussion arises in the future, we will be glad to arrange for such a discussion."—the sensible thing to have done would have been to discuss the situation with this Board and arrive at some new understanding consonant with what the National Board deems necessary to effectuate the federal policy. A single conference could iron out any misunderstandings. This Board has never been advised by the National Board or its regional office or any of its representatives that those charged with the duty of administering the National Act had any complaint of any kind to make with respect to the manner in which this Board has been administering the state Act. At the conference at Washington the National Board even pointed out that its own election machinery was slow and that state election machinery was much more adapted to a speedy determination. All parties seemed agreed that speedy determinations in election matters were desirable. All cases referred to in the Appendix to the Solicitor's brief involve cases with respect to use of the election machinery of this Board.

The National Board will continue to receive the full cooperation of this Board in all phases of its administration of the national law.

We have read the attached brief of the Attorney General with respect to proper interpretation of the various sections of the Wisconsin Act discussed in the brief. We are in full accord with the interpretation placed upon these sections by the Attorney General. Having regard to the factual situation of particular cases, we know of no instance where we have in the past administered the Wisconsin law in any manner inconsistent with any such interpretations.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Henry C. Fuldner
Henry C. Fuldner, Chairman
L. E. Gooding
L. E. Gooding, Commissioner
R. Floyd Green
R. Floyd Green, Commissioner

Leo Mann, being first duly sworn, on oath, deposes and says:

(1) I am a member of the firm of Lines, Spooner & Quarles, who for many years have been attorneys for Allen-Bradley Company. I have had personal charge of all legal matters in connection with the strike at Allen-Bradley Company and Labor Board proceedings in connection therewith, as well as with all negotiations incident to the settlement of Charges filed by the Union and pending before the National Labor Relations Board.

(2) This affidavit is made in connection with certain statements made by Mr. Robert B. Watts, General Counsel for the National Labor Relations Board, in a letter by him addressed to Honorable Charles Fahy, Solicitor General of the United States, which is printed as an Appendix to the Solicitor General's Brief. The letter refers to certain phases of the Allen-Bradley Company labor matters and settlement of Charges filed with the National Labor Relations Board. This affiant participated personally in all of these matters and makes this affidavit from personal knowledge of the facts.

(3) The Company filed its Complaint against the Union and employes before the Wisconsin Labor Relations Board on June 5, 1939. The hearing before the Wisconsin Labor Relations Board on this Complaint ended June 30, 1939. The Union filed its first Charges with the National Labor Relations Board on July 1, 1939.

(4) By letters dated August 17, 1939, and August 29, 1939, the Company discharged 20 employees for various acts of violence and breaches of the peace committed by them which interfered with the Company's business and with employees who wanted to work during the strike.

(5) The Union filed Amended Charges with the National Labor Relations Board on September 30, 1939. They included the charge of improper discharge of these 20 employees.

(6) On September 9, 1940, the Company filed a Petition with the Wisconsin Labor Relations Board for an election to determine whether the Union still represented a majority. The election was conducted October 30, 1940. It resulted in a certification of the Union as the representative of the majority. Thereupon, the Company continued its collective bargaining negotiations and entered into a collective bargaining agreement with the Union.

(7) At the hearing before the Wisconsin Labor Relations Board on this Petition for an election, a letter was presented, signed by the Regional Director of the National Labor Relations Board at Milwaukee, Wisconsin, dated September 24, 1940, stating that the Charges filed had been investigated, and that the Board had directed him to issue a Complaint against the Company.

(8) No such Complaint ever issued. Instead, the Regional Director negotiated with the Company for over a year to settle the controversy, and it was finally settled by written Stipulation dated December 16, 1941. This Stipulation provided for the reinstatement of 6 of the 20 discharged employees. They were reinstated by the Company pursuant to the Stipulation shortly after December 16, 1941.

(9) These persons were not in the employ of the Company from the dates of their discharge in August, 1939, until some time after December 16, 1941. They were not employes of the Company at the time of the representation election held October 30, 1940.

LEO MANN

Subscribed and sworn to before me
this 25th day of February, 1942

RUTH TISCHER

Notary Public, Milwaukee Co., Wis.
My commission expires 4-25-43

EXHIBIT C

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT
RELATIONS BOARD

Case No. 119 E-33

In the Matter of
ALLIS-CHALMERS MANUFACTURING CO.,
and
INDEPENDENT UNION OF ALLIS-CHALMERS EM-
PLOYEES.

MEMORANDUM IN RE: PETITION OF INDEPENDENT
UNION OF ALLIS-CHALMERS EMPLOYEES FOR
AN ELECTION.

We are today entering an Order dismissing the petition of the Independent Union of Allis-Chalmers Employees, heretofore filed with this Board, requesting the Board to conduct an election among the production employees of the Allis-Chalmers Manufacturing Company, at the plant of said Company in the City of West Allis, Wisconsin, and are filing this Memorandum of our reasons for so doing.

It appeared at the time of the hearing that the Allis-Chalmers Manufacturing Company is engaged in the manufacture of machinery of various types. The Company has its main plant located in the City of West Allis, Wisconsin. It also has several other plants located in different cities throughout the United States, and the vast majority of its finished product goes into interstate commerce, and the big bulk of its raw material is derived from sources outside the state of Wisconsin. It appeared to be clear that

the operations of the Allis-Chalmers Manufacturing Company are such that without question the National Labor Relations Board would have jurisdiction of any question relating to the selection by the employees of a representative for the purpose of collective bargaining any time that such jurisdiction was invoked by a proper procedure. It further appeared that heretofore the jurisdiction of the National Labor Relations Board was invoked by the employees of the Allis-Chalmers Manufacturing Company to determine such question, and that after a full and complete hearing and full consideration, such Board did, on the 20th of November, 1937, direct that an election be conducted among the employees of the West Allis plant of the Allis-Chalmers Manufacturing Company to determine what, if any representative was desired by the employees of various bargaining units set up by such order. Thereafter, the National Labor Relations Board conducted such an election, and as a result of such election, on the 9th day of February, 1938, certified that Local No. 248, International Union, United Automobile Workers of America, affiliated with the Committee for Industrial Organization, had been selected by a majority of the production employees of the West Allis, Wisconsin plant of the Allis-Chalmers Manufacturing Company, as the representative of such employees for the purpose of collective bargaining. Ever since such time, Local 248 has acted as such representative and has negotiated with the Allis-Chalmers Manufacturing Company on behalf of all of the production employees, as directed by such certification made by the National Labor Relations Board.

After Local 248 was so certified by the National Board as the bargaining representative of such production employees, and some time in March of 1939, the Independent

Union of Allis-Chalmers Employees was organized and has since conducted a campaign among the production employees of the Company for members, with a view of eventually representing such employees in collective bargaining with the employer. This union has now filed with the Wisconsin Employment Relations Board a petition requesting this Board to conduct an election to determine who the production employees of the West Allis plant of the Allis-Chalmers Manufacturing Company desire as their bargaining representative, and claim that if an election were now held, a majority of the employees would select such Independent Union as their bargaining representative.

We have consistently taken jurisdiction when requested by the employees of any manufacturing plant located within the State of Wisconsin, of questions concerning the representation of such employees for the purpose of collective bargaining, irrespective of whether the operations of such plant had an effect on interstate commerce or not, and would do so in this case, were it not for the fact that heretofore the jurisdiction of the National Labor Relations Board had been invoked, and such Board has made a determination. It is true that the National Labor Relations Board has frequently held that a certification of the representative of employees made by it may be changed whenever there is a change desired by a majority of the employees. That Board has usually considered such a certification as valid for a period of at least one year, but has never held, after such a period, that the fact that there has been a prior certification of one union, prevents the Board from making an investigation to determine who the employees presently desire as their bargaining representative. It does not follow from this, however, that because

Local 248 was certified as the bargaining representative for production employes by the National Labor Relations Board more than one year ago, that the certification is no longer in effect, and that it is mandatory upon this Board, upon the filing of a petition, to order an election and determine the question of who now is a proper bargaining agent for the employes of this Company. If any change is to be made in the certification of a bargaining agent, it properly should be made by a Board which clearly has jurisdiction of the question, and whose jurisdiction has been invoked heretofore by the employes of the Company, and by whom an order has heretofore been made determining the question.

The Wisconsin legislature, by the passage of the Wisconsin Employment Relations Act and the creation of this Board to administer such Act, declared the policy of the State of Wisconsin that the important feature of the law to be constantly kept in mind by the members of the Board was that such legislation was passed with a view of bringing about industrial peace insofar as such a result could be obtained by legislation. We have endeavored, in all cases submitted to us, to clearly keep in mind this declaration of policy. We recognize in the case now before us, that peaceful relations in a large manufacturing plant such as here involved, can easily be disrupted by disputes between competing unions. At the same time, we recognize that the National Labor Relations Act was passed by Congress, and that Congress also had in view the importance of the maintenance of industrial peace. We recognize the fact that the National Labor Relations Board, created by Congress to administer the National Labor Relations Act under the decisions of the courts, has jurisdiction over questions

similar to the question here attempted to be raised, and that long prior to the creation of this Board, the jurisdiction of that Board was invoked in a proper proceeding, and after an election, Local 248 was properly certified as the bargaining representative of all of the production employees. The National Labor Relations Act is still in effect, and the National Labor Relations Board still has jurisdiction of such question. If we were to assume jurisdiction in this case, and there resulted from such assumption of jurisdiction a result different from that determined by the National Labor Relations Board, and we were to certify some other bargaining representative for the production employees of this Company, it could only result in confusion and chaos, and certainly would be of no aid in bringing about industrial peace at West Allis. Such a result would upset present contractual relations between the Company and its employees, would undoubtedly result in litigation, and could easily result in a condition in which the Company would be unable to successfully bargain with any representative of its employees for a long period of time.

It is therefore, our conclusion that in view of the fact that the jurisdiction of the National Labor Relations Board has been invoked by the employees of the Allis-Chalmers Manufacturing Company for the purpose of determining questions relating to the representative of such employees for the purpose of collective bargaining; that in February, of 1938, Local 248 was duly certified by such Board after an election properly conducted, as the representative of the employees involved in this proceeding; that since such time the Company has bargained collectively with its employees through the representative so certified; that if the employees of the Company desire such representative to be

changed, the new certification should be made by the National Labor Relations Board, and that this Board must therefore refuse to attempt to certify any representative as the bargaining representative of such employees.

Both the Wisconsin Employment Relations Act and the National Labor Relations Act were passed for the purpose of reducing industrial strife; both are binding and affect certain employees and certain employers within the State of Wisconsin. In the administration of the Wisconsin Employment Relations Act, it has been and will continue to be the effort of this Board to avoid any conflict in such administration, and were we to assume jurisdiction in this case, such conflict would immediately be present unless Local 248 was still the choice of a majority of the employees of this Company. In dismissing this petition, no right of any employee of the Allis-Chalmers Manufacturing Company is in any way infringed. The Independent Union of Allis-Chalmers Employees may, if they see fit and honestly believe that a majority of the employees of this plant desire a change in their bargaining representative, petition the National Labor Relations Board to make an investigation and certify them as the bargaining agent of such

employees. This we believe to be the proper and only course to be taken.

Given under our hand and seal at the City of Madison, Wisconsin, this 24th day of May, 1940.

**WISCONSIN EMPLOYMENT RELATIONS BOARD
[SEAL]**

By Henry C. Fuldner
Henry C. Fuldner, Chairman

L. E. Gooding
L. E. Gooding, Commissioner

R. Floyd Green
R. Floyd Green, Commissioner